

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *gg* D.C.
05 OCT 18 AM 10:37

THOMAS M. GOULD
CLERK U.S. DISTRICT COURT
W.D. OF TENNESSEE

CURTIS RICHMOND, JR.,

Plaintiff,

vs.

REGINALD JOYNER, et al.,

Defendants.

X
X
X
X
X
X
X
X
X
X
X

No. 04-3051-M1/V

ORDER ASSESSING FILING FEE
AND
ORDER TO AMEND COMPLAINT

On December 22, 2004, Plaintiff, Curtis Richmond, booking number 04114411, an inmate at the Shelby County Criminal Justice Center (Jail),¹ filed a complaint under 42 U.S.C. § 1983. On August 12, 2005, he filed an amended complaint. The Clerk of Court shall file the case and record the defendants as Reginald Joyner, Michael Lambert, Willie Herenton.

I. ASSESSMENT OF FILING FEE

Under the Prison Litigation Reform Act of 1995 (PLRA), 28 U.S.C. § 1915(b), all prisoners bringing a civil action must pay the full filing fee of \$150 required by 28 U.S.C. § 1914(a). The in forma pauperis statute, 28 U.S.C. § 1915(a) merely provides the

¹ The word prison is used in this order to refer to all places of confinement or incarceration, including jails, penal farms, detention and classification facilities, or halfway houses.

6

prisoner the opportunity to make a "downpayment" of a partial filing fee and pay the remainder in installments.

In this case, plaintiff has not properly completed and submitted both an in forma pauperis affidavit and a prison trust fund account statement. Pursuant to 28 U.S.C. § 1915(b)(1), it is ORDERED that the plaintiff cooperate fully with prison officials in carrying out this order. It is further ORDERED that the trust fund officer at plaintiff's prison shall calculate an initial partial filing fee equal to twenty percent of the greater of the average balance in or deposits to the plaintiff's trust fund account for the six months immediately preceding the completion of the affidavit. When the account contains any funds, the trust fund officer shall collect them and pay them directly to the Clerk of Court. If the funds in plaintiff's account are insufficient to pay the full amount of the initial partial filing fee, the prison official is instructed to withdraw all of the funds in the plaintiff's account and forward them to the Clerk of Court. On each occasion that funds are subsequently credited to plaintiff's account the prison official shall immediately withdraw those funds and forward them to the Clerk of Court, until the initial partial filing fee is paid in full.

It is further ORDERED that after the initial partial filing fee is fully paid, the trust fund officer shall withdraw from the plaintiff's account and pay to the Clerk of this Court monthly

payments equal to twenty percent (20%) of all deposits credited to plaintiff's account during the preceding month, but only when the amount in the account exceeds \$10.00, until the entire \$150.00 filing fee is paid.

Each time that the trust fund officer makes a payment to the Court as required by this order, he shall print a copy of the prisoner's account statement showing all activity in the account since the last payment under this order and file it with the Clerk along with the payment.

All payments and account statements shall be sent to:

Clerk, United States District Court, Western District of
Tennessee, 242 Federal Building, 167 N. Main St., Memphis, TN
38103

and shall clearly identify plaintiff's name and the case number on the first page of this order.

If plaintiff is transferred to a different prison or released, he is ORDERED to notify the Court immediately of his change of address. If still confined he shall provide the officials at the new prison with a copy of this order.

If the plaintiff fails to abide by these or any other requirement of this order, the Court may impose appropriate sanctions, including either dismissal or a monetary fine or both, without any additional notice or hearing by the Court.

The Clerk shall mail a copy of this order to the prison official in charge of prison trust fund accounts at plaintiff's prison.

II. FACTS

Richmond sues Memphis Fire Department Employee Reginald Joyner, Emergency Medical Services Director Michael Lambert, and Memphis Mayor Willie Herenton. Plaintiff alleges that on May 8, 2004, defendant Joyner assaulted him, caused paramedics to deny him medical care, and also caused his arrest by Memphis Police Officers. Plaintiff was criminally charged for the altercation; however, he has failed to allege what charges were placed against him or the disposition of those charges.

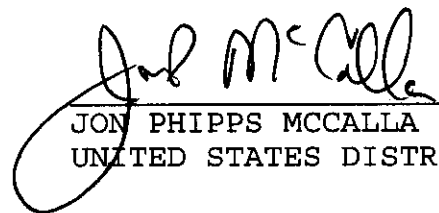
It is unclear whether plaintiff's claims have already accrued. Accrual depends on whether the charges brought against him have been resolved. Under Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), and Schilling v. White, 58 F.3d 1081, 1085 (6th Cir. 1995), if the resolution of claims in this civil rights action would necessarily call into question the validity of a state criminal conviction or an as yet unresolved state criminal prosecution, the claims have not yet accrued.

III. ORDER TO AMEND COMPLAINT

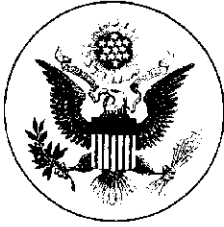
Accordingly, at this point plaintiff has failed to file a complaint that would warrant an answer from the named defendants. The plaintiff is therefore directed to amend his complaint to state

all charges placed against him as a result of the incident on May 8, 2004, and the disposition of all charges brought against him. Plaintiff must file this amendment within twenty (20) days of the docketing of this order. A failure to timely file the amendment and affidavit in compliance with this order will result in the complaint being dismissed.

IT IS SO ORDERED this 17 day of October, 2005.



JON PHIPPS MCCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 6 in case 2:04-CV-03051 was distributed by fax, mail, or direct printing on October 18, 2005 to the parties listed.

Curtis Richmond
04114411
201 Poplar Ave.
Memphis, TN 38103

Honorable Jon McCalla
US DISTRICT COURT